

U.S. Application Serial No. 09/610,768

REMARKS

The present amendment is in response to the Official Action dated June 9, 2004, wherein the Examiner rejected pending claims 1, 2, 4, 11-13, 26, 28 and 29. More specifically, the Examiner rejected claims 1-2, 4, 11-13, 26, 28 and 29 as being unpatentable over Alpert, US Patent No. 5,742,666; in view of various combinations of Nichols, US Patent No. 5,109,525; Tanaka, JP 08251313; and Ebata et al., US Patent No. 6,487,542. However the references cited by the Examiner, either separately or in combination, fail to make known or obvious the claims of the present application. The specific reasoning supporting the applicants' conclusions are set forth below. As a result, reexamination and reconsideration of the above-identified application, in view of the present remarks, is hereby requested.

The applicants note with appreciation the Examiner's indication that claims 5-10, 14-24, 27 and 30 are allowed.

Relative to the Examiner's most recent rejection of claims 1-2, 13, 26 and 29, the Examiner continues to rely upon Alpert, '666, but alternatively relies upon Nichols, '525, in place of previously relied upon Shirk et al., US Patent No. 6,539,301. However, Nichols, '525, fails to correct the shortcomings of the previous combination of references, in so far as, Nichols, '525, contrary to the assertions of the Examiner, minimally fails to make known or obvious sending the stored message when a predetermined time has elapsed on a timer wherein the timer, as provided by the present claims, is initiated when the call is established. More specifically, Nichols, '525, provides that "the controller can include a timer 35 for adding a random time delay at blocks 54, 60, and 74 prior to deciding that the channel is not busy" (col. 3, lines 29-31) (emphasis added). Still further, the Examiner, in formulating the rejection, describes the reference as including a timer, which is applied to delay operational execution such as checking channel availability before transmission of stored message. However, a call cannot be established until a channel is available, such that a timer which delays checking channel availability, which would presumably occur before a call is established, can not be said to be initiated when the call is established. Consequently, Nichols, '525, similarly fails to make up for the deficiencies of Alpert, '666, in attempting to make known or obvious claims 1-2, 13, 26 and 29. The same reasoning is equally applicable to the Examiner's rejection of claim 28.

U.S. Application Serial No. 09/610,768

Additionally, relative to claim 28, as well as claims 4 and 12, newly cited reference Tanaka, JP 08251313, fails to make known either not sending and/or terminating sending the stored message from the wireless device if audio signals are detected being picked-up by the microphone of the wireless device.

Tanaka, JP 08251313, is directed to the sharing of a transmission line between a voice signal (i.e. packetized voice signal) and a data signal (i.e. Fax signal). However, contrary to the noted claims of the present application, Tanaka, '313, does not terminate the sending (claim 12) or not send (claim 4) the stored message, but only temporarily suspends the transmission of the data signal until a voice signal is no longer present for transmission (i.e. transmission preference of the available transmission bandwidth is given to the voice signal). Consequently, the data signal described by the reference is intended to be eventually transmitted, as bandwidth relative to the communication channel becomes available, that is not being alternatively used for transmitting voice signals. This is contrary to a stored message not being sent and/or the sending of the stored message being terminated, when audio signals have been detected being picked-up by the microphone of the wireless device, and therefore the combined teachings of the relied upon references fail to make known or obvious claims 4, 12 and 28.

Relative to claim 11, the Examiner has attempted to suggest that Ebata et al., US Patent No. 6,487,542, in combination with Alpert, '666, makes known the inclusion of a digital signature with the data message including emergency information. However as previously articulated in connection with appeal brief, such an assertion is simply without merit. As noted in the appeal brief, the Examiner has failed to provide any motivation as to why the same would be obvious in the present context and/or the context of the base reference, namely Alpert, '666, where the additional reference, Ebata et al., '542, generally relates to a digital signature which is obtained by encrypting the data or message with the secret key of the user at the sending terminal for purposes of security (i.e. avoid wire tapping).

In the present context, the digital signature is associated with the data message including emergency information, which in at least some embodiments of the present invention insures the legitimacy and correspondingly in at least some instances potentially enables an event to have a legal effect, which might be important in circumstances involving an at least partially automated response. This can be important, where the triggering of the at least partially automated response

U.S. Application Serial No. 09/610,768

might imply an emergency condition in which the user can not otherwise respond, which might make the legally established effect of a digital signature associated with the data message relevant.

More importantly, the Examiner has failed to associate any motivation, which is identified in a cited reference and/or correspondingly the prior art, which would suggest that one would have been led to include a digital signature with the messages being transmitted in the context of Alpert, '666, in a manner which would make known or obvious the features of the present invention. Furthermore, the vague and general assertions being made in support of the rejection can not be said to make known or obvious the feature in connection with the claims of the present application. Because the Examiner has failed to properly establish a proper motivation to incorporate a digital signature, as provided by Ebata et al., '542, in a context consistent with the Alpert, '666, the corresponding rejection should be reversed.

As presently amended, the claims are allowable over the prior art of record for the reasons noted above. Allowance of the application is respectfully requested.

In the event, that there are any remaining unresolved issues precluding the issuance of the present application after consideration of the present response, before issuing a further rejection, the Examiner is respectfully requested to contact the applicants' agent at the below listed number to discuss the same.

Respectfully submitted,

BY: Lawrence J. Chapa
Lawrence J. Chapa
Reg. No. 39,135
Phone (847) 523-0340
Fax. No. (847) 523-2350

Motorola, Inc.
Personal Communications Sector
Intellectual Property Department
600 North US Highway 45, RM AN437
Libertyville, IL 60048